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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,678	10/15/2003	Walter Aichholzer	510.1088	7076

23280 7590 10/28/2005

DAVIDSON, DAVIDSON & KAPPEL, LLC
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NEW YORK, NY 10018

EXAMINER

TUROCY, DAVID P

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/685,678

Applicant(s)

AICHHOLZER ET AL.

Examiner

David Turocy

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Detailed Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 10/17/2005 have been fully considered but they are not persuasive.

The applicant has argued that Kiriazis and Ellison is not combinable with Lahrman, stating Kiriazis and Ellison teach of multi-layer paint films to be applied to end components in their dry state and Lahrman teaches a multi-layer process in which each layer is applied to the end product. However, the examiner respectfully disagrees. Both Kiriazis and Lahrman are concerned with a multi-layer coating on an automotive panel, and while the references apply the multi-layer coating in different manners, both reference are concerned with the relative thicknesses of the layers and the overall thickness of the multi-layer film to be applied to the automotive panel, and therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kiriazis to use the relative coating thicknesses as suggested by Lahrman to provide a desirable multilayered coating film because Lahrman discloses a filler coating thickness of 35 microns followed by a basecoat thickness of 10 microns is known in the art to provide multi-layered coating on an automotive panel and therefore would reasonably be expected to effectively provide a multi-layered film to be applied to an automotive panel. Please note that the test of obviousness is not an express suggestion of the claimed invention in any or all references, but rather what the references taken collectively would suggest to those of ordinary skill in the art presumed to be familiar with them (*In re Rosselet*, 146 USPQ 183).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The applicant has argued against the combination of Kiriazis with Lahrmann, see Page 3-4 of reply dated 10/17/2005. The examiner respectfully disagrees with the applicant's assertions. Kiriazis explicitly teaches of a method of producing a film with several coating layers for automobile manufacturing (Abstract). Kiriazis discloses coating a support layer with a first coating comprising a filler composition, a second coating comprising a pigmented paint layer, and a subsequent transparent coating layer (Abstract). Kiriazis teaches of application of filler composition onto a support film and discloses such filler deposition is known in conventional painting of car bodies onto a electrodeposited primer composition, see column 2, lines 30-50. Lahrmann teaches of such conventional painting of car bodies discloses it is known in the art to apply a filler composition to a thickness of 35 microns, within the range as claimed, and a second coating thickness of 10 microns (Example 5). Therefore Lahrmann discloses applying a first coating thickness 3.5 times larger than the second thickness, which is within the range as claimed. Therefore, it would have been obvious to one skilled in the art at the

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time of the invention to modify Kiriazis to use the relative thickness of the filler and second coating thickness as suggested by Lahrmann to provide a desirable multi-layer automotive coating with a reasonable expectation of success because Kiriazis teaches application of a filler coating and a second pigment coating onto a plastic film and also discloses depositing the filler composition as in conventional car body painting, where the conventional car body painting is taught by Lahrmann.

The applicant has argued against the examiners combination of Kiriazis and Lahrmann stating the examiner has improperly mixed and matched features of Lahrmann with Kiriazis. However, the examiner respectfully disagrees. Kiriazis discloses deposition and filler composition as in conventional car body painting and also discloses application of a pigmented paint layer onto the filler layer. Lahrmann discloses during a conventional car body painting it is known to deposit a filler composition of 35 microns followed by a pigmented coating of 10 microns. The examiner is merely utilizing Lahrmann to show known and conventional relative thicknesses between the filler coating and the pigment coating. The examiner does not mix and match features because both the filler coating and the pigment coating are taught by Kiriazis.

The applicant has argued against the Kiriazis reference stating the reference teaches away from the present invention because the both examples are directed to a 20 micron thick second film, which is greater than the possible thickness of the second layer as claimed. While the examiner notes the examples of Kiriazis are both direct to a pigmented second film of a thickness of 20 microns, it is the examiners position that this

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discloses is merely exemplary and the disclosure of Kiriazis is not limited to such thickness.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Turocy whose telephone number is (571) 272-2940. The examiner can normally be reached on Monday-Friday 8:30-6:00, No 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Turocy
AU 1762



TIMOTHY MEESKS
SUPERVISORY PATENT EXAMINER